

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KASHAWN WESTON,	§	
	§	No. 436, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0301003687
Appellee.	§	

Submitted: October 8, 2009

Decided: January 5, 2010

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 5<sup>th</sup> day of January 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) The appellant, Kashawn Weston, filed this appeal from the Superior Court's July 2, 2009 denial of his second motion for postconviction relief<sup>1</sup> pursuant to various subsections of Superior Court Criminal Rule 61(i).<sup>2</sup> The State of Delaware has filed a motion to affirm the Superior

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<sup>1</sup> *State v. Weston*, 2009 WL 1913283 (Del. Super.).

<sup>2</sup> *See* Del. Super. Crim. R. 61(i) (listing procedural bars to relief).

Court judgment on the ground that it is manifest on the face of Weston's opening brief that the appeal is without merit.<sup>3</sup> We agree and affirm.

(2) In 2003, Weston was arrested after probation officers found drugs, money and weapons in the home where Weston resided. A Superior Court jury convicted Weston of numerous offenses including Possession of a Firearm During the Commission of a Felony (PFDCF).

(3) On direct appeal, Weston argued that there was insufficient evidence to convict him of the crimes with which he was charged. This Court disagreed concluding, in pertinent part, that there was "sufficient evidence to support a finding that . . . the gun . . . was readily accessible" to Weston.<sup>4</sup>

(4) In his first motion for postconviction relief, filed in June 2005, Weston alleged ineffective assistance of counsel. The Superior Court denied the motion, and on appeal this Court affirmed.<sup>5</sup>

(5) In his second motion for postconviction relief, filed in April 2009, Weston challenged his PFDCF conviction, arguing that the Superior Court's 2008 decision in *State v. Contee* provided him with a basis for retroactive relief on a claim of insufficient evidence.<sup>6</sup> By order dated July 2, 2009, the Superior Court denied Weston's insufficient evidence claim as

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<sup>3</sup> Del. Supr. Ct. R. 25(a).

<sup>4</sup> *Weston v. State*, 2004 WL 1551341 (Del. Supr.).

<sup>5</sup> *State v. Weston*, 2006 WL 257202 (Del. Super.), *aff'd*, *Weston v. State*, 2007 WL 135606 (Del. Supr.).

<sup>6</sup> *State v. Contee*, Del. Super., Cr. ID No. 0301003687, Young, J. (Dec. 23, 2008) (granting motion to dismiss).

without merit and barred the postconviction motion as untimely,<sup>7</sup> repetitive,<sup>8</sup> and procedurally defaulted.<sup>9</sup> This appeal followed.

(6) On appeal, Weston continues to challenge his conviction for PFDCF on the basis of insufficient evidence under *State v. Contee*. Weston also asks that this Court remand his case to the Superior Court to further analyze his PFDCF conviction under this Court's 2009 decision in *Lecates v. State*.<sup>10</sup>

(7) Having considered Weston's claims and the State's motion to affirm, we conclude that the Superior Court did not err when it denied Weston's second motion for postconviction relief on procedural grounds. The Court agrees that Weston's motion is time-barred, repetitive and procedurally defaulted, and that Weston's claim of insufficient evidence (whether analyzed under *Contee* or *Lecates*) is without merit.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>7</sup> Del. Super. Ct. Crim. R. 61(i)(1).

<sup>8</sup> Del. Super. Ct. Crim. R. 61(i)(2).

<sup>9</sup> Del. Super. Ct. Crim. R. 61(i)(3).

<sup>10</sup> *Lecates v. State*, \_\_\_ A.2d \_\_\_, 2009 WL 3335119 (Del. Supr.). In *Lecates*, the Court clarified the distinct standards of possession when analyzing the sufficiency of evidence supporting convictions of Possession of a Deadly Weapon During the Commission of a Felony and Possession of a Weapon by a Person Prohibited.